IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

MFA.No. 951 of 2001()

OPMV.981/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALA
.....

APPELLANT: 5TH RESPONDENT

NATIONAL INSURANCE CO.LTD.,
PALA , REP.BY ITS ASST.ADM. OFFICER,
REGIONAL OFFICE, M.G.ROAD, ERNAKULAM.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS: CLAIMANT/ RESPONDENT 1 TO 4 AND 6
----
1. **MANEESH (MINOR), (DATE OF BIRTH 21.1.1986)**
REP.BY NEXT FRIEND AND GUARDIAN SIVAN,
S/O.NARAYANAN, CHETTIMATTATHIL HOUSE,
NARIYANANI P.O., PONKUNNAM.

2. **JOSEPH VARGHESE, ONATTUKUNNEL HOUSE,**
VAZHOOR EAST P O.

3. **BIJU, KALARICKAL HOUSE,**
URULIKKUNNAM BHAGAM, ELANGULAM VILLAGE.

4. **JOY R.MATHEW, RANDUPLACKAL HOUSE,**
CHERUVALLY PONKUNNAM.

5. **RAJU V.THOMAS, VADAKKEL HOUSE,**
MOOZOOR P.O., AYARKUNNAM (DELETED)

6. **THE ORIENTAL INSURANCE CO.LTD.,**
BRANCH OFFICE, KOTTAYAM.

BY ADV. SRI.MATHEWS JACOB - R6
SRI.MATHEW JOHN (K) - R1
SRI.SUJESH MENON V.B.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 29/11/2007,ALONG WITH MFA. NO.952/01, 954/01 AND 955/01 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.F.A. NO.951/2001

ORDER ON CMP. NO.7282/2001 IN MFA. NO.951/2001

DISMISSED

29.11.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- K.HEMA, JUDGE

/TRUE COPY/

P.S. TO JUDGE

tss

J.B. KOSHY & K.HEMA, JJ.

M.F.A.Nos.951, 952, 954 & 955 of 2001
and cross objection in M.F.A.No.955 of 2001

Dated this the 29th day of November, 2007

Judgment

Koshy,J.

These appeals are filed by the insurance company which insured the autorickshaw. The accident occurred on 23.5.1992 when the autorickshaw insured by the appellant insurance company hit against the motor cycle and rider-cum-owner of the motor cycle as well as the passengers in the autorickshaw were injured. All the claimants alleged that the accident occurred due to the negligent driving of the autorickshaw, but, tribunal found that the accident occurred due to the negligence of both drivers. After holding that the autorickshaw driver is only negligent for 50%, the entire amount assessed was directed to be deposited by the appellant which insured the autorickshaw.

2. It is the contention of the appellant that only 50% of the compensation can be directed to be deposited by the insurance company. We agree with that contention that if the driver of the

autorickshaw insured by the appellant insurance company is guilty only by 50%, the insurance company need deposit only 50% of the compensation. Counsel for the claimants submitted that finding of the tribunal with regard to the negligence on the part of the motor cycle rider is not correct. They did not file an appeal as they entire amount was directed to be deposited by the appellant insurance company, but, cross objection was filed in M.F.A.No.955 of 2001 questioning the finding. On going through the case records and considering the evidence of PWs 1 to 5, we are of the opinion that the matter regarding negligence has to be re-agitated because the tribunal has not considered the evidence in detail especially Exts.A1 to A4 as well as the oral evidence adduced in this case. We are not disturbing the compensation assessed, but, finding of negligence has to be re-assessed afresh by the tribunal on the basis of the evidence already adduced and appellant insurance company can be made responsible only for proportionate negligence found on the part of the driver of the autorickshaw which was insured by the appellant insurance company and if there is negligence on the part of the motor cycle rider, that should be borne by the rider-cum-owner of the motor cycle also.

3. The matter is remanded only to find out the aspect of negligence and consequent liability. Parties shall appear before the tribunal on 30.1.2008.

Appeals and Cross objection are disposed of accordingly.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. Nos. 951, 952, 953 and
955 of 2001
and Cross objection in
M.F.A.No.955 of 2001

Judgment

Dated:29th November, 2007